

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

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STERLING EQUIPMENT, INC.,
Plaintiff

v.

M. A. T. MARINE INC.,
Defendant

DISTRICT COURT
DISTRICT OF MASS.
CIVIL ACTION NO.
04-12313-NMG
IN ADMIRALTY

**POST HEARING MEMORANDUM OF DEFENDANT M. A. T. MARINE, INC
AND SUGGESTION OF BANKRUPTCY**

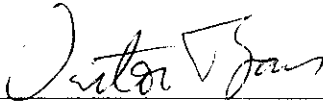
Defendant, M.A.T. Marine, Inc., by its attorneys, files this memorandum as instructed by Judge Gorton at the hearing on November 4, 2004 on Plaintiff's Motion for real estate attachment, to set forth the offer it made to Plaintiff to secure its potential recovery in this action.

On Friday, November 5, 2004, Defendant offered to grant Plaintiff a consensual lien in the amount of \$50,000 on approximately \$75, 000 of its equipment to be selected by the Plaintiff which, the Court should be advised, is a seller of such marine equipment (and in fact sold Defendant the tugboat Chicopee referred to in the Affidavit of Kathleen O'Neil Hallam.) See Exhibit A, email of undersigned to Norman Peloquin making the offer .

Plaintiff responded on November 8th, with a request for more information, which was provided that day. See Exhibit B, email of undersigned to Norman Peloquin, responding to requests for information. On the afternoon of November 9th Plaintiff rejected the proposal and undersigned counsel was advised by the Bank that it would not agree to postpone the foreclosure scheduled for November 18 or to negotiate a workout, and therefore Defendant has this

afternoon filed its Chapter 11 petition in the Bankruptcy Court for this District. Accordingly, the automatic stay of 11 U.S.C. sec. 362 is in effect and this action is stayed.

Respectfully submitted,
BURNS & LEVINSON, LLP

By: 

Victor Bass (BBO #033040)
125 Summer Street
Boston, MA 02110
Telephone: (617) 345-3000
Facsimile: (617) 345-3299

Counsel to the Defendant

Dated: November 9, 2004
00883738

**Victor Bass**

From: Victor Bass
Sent: Friday, November 05, 2004 3:56 PM
To: 'npeloquin@earthlink.net'
Cc: 'matmarine9@aol.com'
Subject: Sterling/MAT Marine

Norman,

Following is a list of equipment owned by MAT Marine and MJH Leasing. The latter items indicated in bold, and are not available for a UCC lien without bankruptcy court approval. Prior to the filing of a Chapter 11 for MAT Marine (we are still waiting to hear from the Bank as to whether that will be necessary), it is willing to give Sterling a \$50,000 lien on its choice (since Sterling is an equipment house and should know which items would be easiest for it to sell in the unlikely event that ever became necessary) of any of the other equipment items, up to a value of \$75,000 or so (i.e., not a blanket lien on all as it does not want to preclude the ability to borrow against other items), to secure any sums Sterling may be owed. My client believes, and yours should certainly be in a position to confirm, that these items offered as collateral together have a fair market value in excess of the following liens on them of substantially more than \$500,000. There are already specific liens on the rubber tire backhoe (for about \$70,000, so it is probably not worth too much as collateral), and the 320 excavator (about \$12,000) and the 100 ton barge (about \$90,000) My client believes each of the latter are sufficiently valuable to more than cover your proposed \$50,000 lien with a comfortable cushion besides.

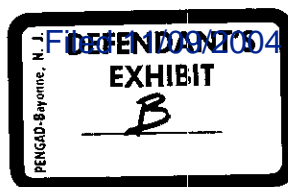
Please let me know your client's position as soon as possible, and hopefully we can work this out amicably and avoid an unnecessary bankruptcy filing, but either way we look forward to working with you cooperatively to get Sterling paid. I look forward to hearing from you.

Vic

Victor Bass
Chair, Bankruptcy Group
Burns & Levinson LLP
125 Summer Street, Boston MA 02110
175 Derby Street, Hingham MA 02043
617-345-3290 fax: 3299

Komatsu PC 1100 excavator
65' Twin screw tug
101' tug
50 ton American Crane
100 ton barge and supporting buckets
1000 c.y. dump scow
Vibro hammer
Diesel and hydraulic hammer
Underwater burning gear
Generators/ welders
50 ton lowbed
32 yard dump trailer
Three ½ yard loader
D3 bulldozer
Bobcat with all attachments
320 excavator
215 excavator
Rubber tire back hoe
2 Ford trucks

11/9/2004



Victor Bass

From: Victor Bass
Sent: Monday, November 08, 2004 3:11 PM
To: 'npeloquin@earthlink.net'; 'peloquin@sealaw.net'
Cc: 'matmarine9@aol.com'
Subject: Sterling/MAT Marine

Norman,

In response to your letter today, Kathy Hallam has provided the requested detail on the equipment, shown below the signature block..

With respect to your other questions:

1. The Bank has not responded to our offer of settlement or my phone call last week. I have no reason to expect that they would subordinate their lien to any attachment or lien you got, whether on the equipment or the real estate, so this should be irrelevant to Sterling.
2. I am advised that MAT Marine did not grant any security interest on the listed equipment to any sureties, which should confirm what you learned when you did the UCC search of which you advised the Court. Accordingly, your client should have no subrogation concerns. While it is thus irrelevant to the issue before us, I am also advised that there was no default on the Rye job, and that the issues which arose have been resolved without liability on MAT Marine's part.

Please let me know on which equipment Sterling will accept a voluntary security interest, or whether you will continue to request a real estate attachment from the court. I look forward to hearing from you promptly.

Vic

Victor Bass
 Chair, Bankruptcy Group
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 175 Derby Street, Hingham MA 02043
 617-345-3290 fax: 3299

Komatsu PC 1100 excavator 1999 excellent condition

65' Twin screw tug 1984 new engin's last year, excellent condition

101' tug built in 1952 good condition

50 ton American Crane 1980 -597 model new bottom put on 2 years ago good condition

100 ton barge and supporting buckets Built in 1956 spud barge excellent condition

1000 c.y. dump scow Built in 1956 good condition

Vibro hammer 1995 model 216 good condition

Diesel and hydraulic hammer Vulcan model 958 good condition

Underwater burning gear

Generators/ welders

50 ton lowbed 2002 Fontaine drop deck like new

32 yard dump trailer 1978 Trailstar fair condition

938 Loader 1998 Liek new condition

D3 bulldozer 1998 excellent condition

Bobcat with all attachments 1997 excellent condition

320 excavator 1998 excellent condition

215 excavator 1985 fair condition, replace botton and tracks 2 yrs ago

Rubber tire back hoe 2002 Pc150 Like new

2 Ford trucks 1997/99 F350's good contition

11/9/2004